

STATE OF MICHIGAN
COURT OF APPEALS

CHRYSLER CORPORATION,

Plaintiff/Counterdefendant-
Appellee/Cross-Appellant,

v

PAUL SHERIDAN,

Defendant/Counterplaintiff-
Appellant/Cross-Appellee.

UNPUBLISHED
February 11, 2003

No. 227757
Oakland Circuit Court
LC No. 94-489177-CZ

Before: Murphy, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

Defendant and counterplaintiff Paul Sheridan (“Sheridan”) appeals as of right from the trial court’s order granting plaintiff and counterdefendant Chrysler Corporation’s (“Chrysler”) motion for summary disposition under MCR 2.116(C)(10). We affirm.

I

Sheridan is a former employee of Chrysler, who at the time of his dismissal in December 1994 worked as a product planner in Chrysler’s Minivan Operations. The instant litigation stems from Sheridan’s alleged dissemination of confidential information relating to minivan development, following which Chrysler discharged Sheridan and initiated this action seeking damages and an injunction against further disclosures by Sheridan. At the time the lawsuit was filed, Chrysler obtained a temporary restraining order prohibiting Sheridan from any unauthorized disclosure of Chrysler’s confidential business information. Chrysler was later granted a preliminary injunction for the same purpose.

The litigation between the parties became protracted, involving various related lawsuits and other legal proceedings, including appeals to this Court. More than two years after the initial lawsuit was filed, Sheridan filed a motion to amend his answer to assert a counterclaim against Chrysler under the Whistleblower’s Protection Act, MCL 15.361 *et seq.*, which he had initially raised as an affirmative defense. The trial court granted Sheridan’s motion with respect to the WPA claim. He also later sought to add counterclaims of injurious falsehood, abuse of process, and retaliatory discharge in violation of public policy. The court denied Sheridan’s later motion with respect to injurious falsehood and abuse of process, but granted Sheridan’s request to add a counterclaim for retaliatory discharge.

In October 1999, the court granted summary disposition of Sheridan's counterclaims in favor of Chrysler. Thereafter, the court dissolved the preliminary injunction, finding that it was no longer warranted. In May 2000, the court granted Chrysler's request to conditionally voluntarily dismiss without prejudice its damages claims against Sheridan. The court denied Sheridan's motion for costs. Sheridan now appeals the trial court's summary dismissal of his WPA counterclaim pursuant to MCR 2.116(C)(10) as well as other interim orders.

II

Sheridan argues that the trial court erred in denying his motion to amend his counterclaim to add counts of injurious falsehood and abuse of process. We review this issue for an abuse of discretion. *Jenks v Brown*, 219 Mich App 415, 420; 557 NW2d 114 (1996).

MCR 2.118(A) provides, in pertinent part:

(1) A party may amend a pleading once as a matter of course within 14 days after being served with a responsive pleading by an adverse party, or within 14 days after serving the pleading if it does not require a responsive pleading.

(2) Except as provided in subrule (A)(1), a party may amend a pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires.

Although the trial court has discretion to allow or deny amendments, the "leave shall be freely given" language of MCR 2.118(A)(2) favors granting leave. As this Court stated in *Jenks, supra* at 419-420:

Amendment is generally a matter of right rather than grace. A trial court should freely grant leave to amend if justice so requires. MCR 2.118(A)(2). Leave to amend should be denied only for particularized reasons, such as undue delay, bad faith, or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party, or where amendment would be futile. [Citations omitted.]

We agree that delay, by itself, was an insufficient reason to deny Sheridan's motion to add an abuse of process claim because there was no indication that Chrysler would have been unduly prejudiced by the belated amendment. *Traver Lakes Community Maintenance Ass'n v Douglas Co*, 224 Mich App 335, 343-344; 568 NW2d 847 (1997). However, we find no abuse of discretion regarding the trial court's denial of leave to add the injurious falsehood claim because of delay and bad faith. We cannot conclude that the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Dep't of Transportation v Randolph*, 461 Mich 757, 768; 610 NW2d 893 (2000). The court's statement that Sheridan "might be Judge shopping" is not without support given the procedural history of the parties' litigation. Sheridan's injurious falsehood claim could be viewed as a reincarnation of his defamation action against Chrysler, which was assigned to a different judge, but was dismissed because Sheridan failed to appear for his deposition.

Although delay alone was not grounds for denying leave to add the abuse of process claim, the trial court's decision was nonetheless proper because amendment would have been futile. *Jenks, supra* at 420. Even though the trial court did not rely on futility as a basis for its decision, this Court will affirm a trial court when it reaches the right result for the wrong reason. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 470; 628 NW2d 577 (2001).

To establish a claim of abuse of process, the claimant must show (1) an ulterior purpose, and (2) an act in the use of process that is improper in the regular prosecution of the proceeding. *Friedman v Dozorc*, 412 Mich 1, 30; 312 NW2d 585 (1981). In *Vallance v Brewbaker*, 161 Mich App 642, 646; 411 NW2d 808 (1987), this Court explained:

A meritorious claim of abuse of process contemplates a situation where the defendant has availed himself of a proper legal procedure for a purpose collateral to the intended use of that procedure, e.g., where the defendant utilizes discovery in a manner consistent with the rules of procedure, but for the improper purpose of imposing an added burden and expense on the opposing party in an effort to conclude the litigation on favorable terms. . . .

Furthermore, the improper ulterior purpose must be demonstrated by a corroborating act; the mere harboring of bad motives on the part of the actor without any manifestation of those motives will not suffice to establish an abuse of process.

Sheridan's abuse of process claim alleged that Chrysler acted with the improper motive of silencing him and others so they would not exercise their constitutional right to free speech, testify against Chrysler in product liability actions, and report safety violations to NHTSA.¹

Despite Sheridan's detailed allegations of legal misdeeds by Chrysler, Sheridan failed to allege the gravamen of an abuse of process claim, namely, a corroborating act to demonstrate Chrysler's alleged improper ulterior purpose. *Id.* at 646. Sheridan argues that the "specific acts committed by Chrysler which represent an ulterior motive purpose are specifically identified in Sheridan's proposed Amended Counter Complaint" Sheridan contends that these acts constitute abuse of process because Chrysler committed them with an ulterior motive, and that the alleged ulterior motive is evidence of the fact that these acts are an abuse of process. Sheridan has failed to show a separate, "corroborating act" that demonstrates or is a manifestation of Chrysler's alleged ulterior motive.² *Id.* Sheridan simply alleges that Chrysler's proceedings were dishonest or overreaching and therefore improper. Such allegations, without

¹ National Highway and Transportation Safety Association.

² As the *Vallance* Court observed, abuse of process is not established by a showing of the mere harboring of bad motives, but requires a corroborating act, i.e., a manifestation of the bad motives, as where a defendant offered to dismiss an action for damages without receiving compensation if the plaintiff would cease opposition to the development of a condominium project. *Vallance, supra* at 646, citing *Three Lakes Ass'n v Whiting*, 75 Mich App 564, 569-575; 255 NW2d 686 (1977).

more, cannot establish an abuse of process claim. Because the abuse of process claim was futile, the trial court did not err in denying the amendment.

III

Next, Sheridan argues that the trial court erred in granting Chrysler's motion for summary disposition of his claim under the WPA, pursuant to MCR 2.116(C)(10). In evaluating a motion for summary disposition under MCR 2.116(C)(10), this Court considers the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion to determine whether there is a genuine issue of material fact. *Candelaria v Horizon Cablevision, Inc*, 252 Mich App 681, 685; 653 NW2d 630 (2002). "If the nonmoving party fails to present evidentiary proofs showing a genuine issue of material fact for trial, summary disposition is proper." *Id.* at 685-686. This Court reviews de novo a trial court's denial of summary disposition. *Id.* at 685.

The WPA provides, in pertinent part:

An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation. . . . [MCL 15.362.]

In *Shallal v Catholic Social Services*, 455 Mich 604, 610; 566 NW2d 571 (1997), our Supreme Court set forth the elements necessary to establish a prima facie case for relief under the statute:

To establish a prima facie case, it must be shown that (1) the plaintiff was engaged in protected activity as defined by the [WPA], (2) the plaintiff was discharged, and (3) a causal connection existed between the protected activity and the discharge.

"Protected activity' ... consists of (1) reporting to a public body a violation of a law, regulation, or rule, (2) being about to report such a violation to a public body, or (3) being asked by a public body to participate in an investigation." *Roulston v Tendercare (Michigan), Inc*, 239 Mich App 270, 279; 608 NW2d 525 (2000). The plaintiff bears the initial burden of establishing a prima facie case of retaliatory discharge. *Id.* at 280-281. If the plaintiff establishes the prima facie case, the burden shifts to the defendant to articulate a legitimate business reason for the discharge. *Id.* at 281. If the defendant produces evidence establishing a legitimate reason for the discharge, the plaintiff must have an opportunity to prove that the proffered legitimate reason was not the true reason, but was merely pretext for the discharge. *Id.*

The trial court found that Sheridan established a prima facie case under the WPA, but granted Chrysler's motion because Sheridan failed to raise proofs that Chrysler's proffered reasons for his discharge were pretextual. We agree. Chrysler established that Paul Smuts and Richard Winter jointly agreed that Sheridan should be discharged because he admitted releasing a confidential document to an outside auto parts supplier and because investigators informed them that Sheridan admitted releasing confidential internal crash test documents to a friend, who in turn passed them on to a reporter at *Automotive News*. Smuts considered these actions

violations of the confidentiality provision in Sheridan's employment contract and corporate policy. Although Sheridan raises numerous arguments to show that these reasons were merely pretextual, we find the arguments without merit.

Sheridan denies admitting that he released the crash test documents. However, Chrysler showed that its investigators reported his admission to Smuts, and that Smuts relied on this report in his decision to terminate Sheridan. Even if Sheridan is correct, that does not establish that Smuts' proffered reason is a pretext for retaliation. Sheridan argues that the allegedly released information was not sensitive, and that Chrysler sometimes permitted outside individuals access to such information. Sheridan failed to show, however, that Chrysler regarded his breach of the confidentiality agreement as unimportant. Robert Lutz testified that the information in the *Automotive News* article was not likely to help Chrysler competitors; however, he also stated that the information could damage Chrysler's reputation by giving a false impression of serious problems with the NS-body development. Sheridan's claims that outsiders sometimes attended product planning meetings are too vague to establish that they also had access to the sort of confidential information he leaked.

Finally, we disagree with Sheridan's contention that Smuts' affidavit was improper because it was not based on personal knowledge as required by MCR 2.119(B)(1)(a) and (c). Smuts was not claiming personal knowledge of Sheridan's misconduct; he was claiming personal knowledge of his own reasons for deciding to terminate Sheridan's employment.

Because Sheridan failed to show that his alleged breach of the confidentiality agreement was not Chrysler's true reason for dismissing him, the trial court did not err in granting Chrysler's motion for summary disposition.

IV

Although the trial court granted Sheridan's motion to dissolve the preliminary injunction, he argues on appeal that the trial court erred in not ruling that the injunction infringed on his constitutional right to free speech, US Const, Am I; Const 1963, art I, § 5. We disagree.

Sheridan's reliance on *KLM Royal Dutch Airlines, NV v DeWit*, 418 NYS2d 63 (1979), is misplaced. In that case, the court held that the First Amendment barred a preliminary injunction that barred the defendant from "disclosing trade secret or confidential information or data obtained from the files of plaintiff, his former employer" *Id.* The court held that the preliminary injunction was overbroad in that it barred release of information not traditionally regarded as trade secret. *Id.* However, *KLM* is distinguishable from the instant case, because there is no mention there of a contractual provision for confidentiality. The confidentiality agreement in the instant case is a material distinction that removes Sheridan's dissemination of information from First Amendment protection. This Court held in *Whispering Pines AFC, Home, Inc v Dep't of Treasury*, 212 Mich App 545, 549-551; 538 NW2d 452 (1995), that parties may contractually waive their constitutional rights, and that such contracts are binding.

Additionally, Sheridan's constitutional argument is inconsistent with law interpreting the Uniform Trade Secrets Act. Michigan's enactment of the Uniform Trade Secrets Act, MCL 445.1901 *et seq.*, provides that a court may enjoin an employee from disseminating trade secrets. MCL 445.1903. In *Ford Motor Co v Lane*, 67 F Supp 2d 745, 746-747 (ED Mich, 1999), the

plaintiff sought an injunction under MCL 445.1903 to prevent a non-employee from posting on the Internet information leaked by an employee. The court held that such an injunction would violate the First Amendment guarantee of free speech, *id.* at 750-751, but further commented in a footnote:

The Michigan Uniform Trade Secrets Act is not unconstitutional on its face, *as an injunction may issue against one who plans to reveal a trade secret in violation of an employment contract or in breach of a fiduciary duty. Use of trade secrets in violation of a confidentiality agreement or in breach of a fiduciary duty is not protected by the First Amendment. Cherne Industrial, Inc v. Grounds & Assoc., Inc*, 278 NW2d 81, 94 (Minn 1979); *American Motors Corp v Huffstutler*, 61 Ohio St3d 343, 575 NE2d 116, 120 (1991). [*Id.* at 750 n 6 (emphasis added).]

Accordingly, the trial court did not err in declining to rely on the First Amendment as a basis for granting Sheridan's motion to dissolve the preliminary injunction.

V

Sheridan argues that the trial court erred in denying his motion for costs and attorney fees after Chrysler voluntarily dismissed its claims against him. A trial court's decision to deny or award costs is reviewed for an abuse of discretion. *Egan v Detroit*, 150 Mich App 14, 28; 387 NW2d 861 (1986).

Sheridan does not specifically explain why the trial court's decision was an abuse of discretion; he argues only that the trial court should have awarded costs to restore him to where he was before Chrysler filed its suit. We are not persuaded that the court's decision was an abuse of discretion. We affirm the order denying costs and attorney fees.

VI

In light of our decisions affirming the trial court's orders granting summary disposition with regard to the WPA claim and denying leave to amend to add abuse of process and injurious falsehood counts, we need not consider Chrysler's cross-appeal or Sheridan's argument regarding the tolling of the statute of limitations on Chrysler's original claims.

Affirmed.

/s/ William B. Murphy
/s/ Mark J. Cavanagh
/s/ Janet T. Neff